

A.G. Contract No.: KR04-0531TRN
ADOT ECS File No.: JPA 04-045
Project: SR 260-Corridor Improvement
Section: Cottonwood to I-17/Camp Verde
TRACS No.: H3868 02 C
Budget Source Item #: 10507 Project A-
FY 06/07; 12008 Project A-FY 07/08

INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE STATE OF ARIZONA
AND
YAVAPAI COUNTY, ARIZONA

THIS AGREEMENT is entered into August 3, 2004, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and YAVAPAI COUNTY, ARIZONA, acting by and through its BOARD OF SUPERVISORS (the "County").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The County is empowered by Arizona Revised Statutes Section 11-251 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the County.

3. The design of the widening and realignment of SR 260 goes from milepost (MP) 208.6 at Western Drive in Cottonwood to MP 218.23 near I-17 in Camp Verde. The current ADOT estimate for total construction of this corridor improvement is \$41,250,000. The State and the County have an interest in having SR 260 constructed as soon as can be made possible. The State has considered entering into this Agreement in part because it has 95% of the design completed and has an access management study in place but does not have funding immediately available. The State will make as a priority consideration to program funds in future five-year construction programs as provided below. The County will provide the funds necessary to move these Projects forward in accordance with Arizona Revised Statutes Section 28-7677. The State needs to acquire right of way, relocate utilities, and make design adjustments prior to construction. These improvements are planned to be constructed in three (3) construction Projects as described on Page 2 of this Agreement and in accordance with the map marked Exhibit "A", attached hereto

NO. 26998
Filed with the Secretary of State
Date Filed: 08/03/04

Janice K. Brewer
Secretary of State

By: David D. Greenwald

and made a part hereof as follows:

A. PROJECT A: Acquire the necessary right-of-way, utility relocation, and design adjustments for all three (3) construction Projects listed below. The current ADOT estimate for this work is \$4,250,000.

B. PROJECT 1: Construct, in two sections, Western Drive to Ogden Ranch Road – Widen existing two-lane roadway to five lanes (MP 208.6 to MP 209.8); and Horseshoe Bend to Wilshire – Construct new eastbound roadway (MP 216.8 to MP 218.23). The current ADOT estimate for the construction of these sections is \$11,000,000. (ADOT currently identifies these sections of SR 260 as Phases 1 and 3).

C. PROJECT 2: Hayfield Draw to Horseshoe Bend - Construct new eastbound roadway (MP 212.7 to MP 216.5). The current ADOT estimate for the construction of this section is \$11,200,000. (ADOT currently identifies this section of SR 260 as Phases 4 and 5).

D. PROJECT 3: Hayfield Draw to Ogden Ranch Road – Construct new westbound roadway (MP 209.8 to MP 212.7). The current ADOT estimate for the construction of this section is \$14,800,000. (ADOT currently identifies this section of SR 260 as Phases 2 and 6).

THEREFORE, in consideration of the mutual Agreements expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The County shall:

A. Advance the sum of \$41,250,000, more or less, depending on the costs of the Projects, for the Projects described above, and repay such loans, bonds, or other funding mechanisms. Any unused funds provided by the County in one Project may be moved to the next Project. (*See Exhibit B for an example of the funding schedule*). The parties acknowledge that the County's duties in this regard are subject to funding being approved by the Board of Supervisors and the County's obtaining suitable bonds, loans, or other means of financing.

B. Be responsible for advancing all costs of the Projects including but not limited to:

PROJECT A: Actual cost of right-of-way, and right-of-way expenses such as appraisals, attorneys, and court costs;

PROJECTS 1 THROUGH 3: Costs of preparation of plans and specifications, bidding, all compensation to the contractor, including changes and overruns and construction administration and engineering costs.

C. Make four (4) equal payments to the State for each Project. The first payment when construction begins; the second payment at 25% completion; the third payment at 50% completion; the final payment at 75% completion of each Project.

D. The County shall make a total net contribution, after repayments, of at least \$5,000,000. Any interest, which the County pays for its loans or bonds, shall be counted against the \$5,000,000. If the interest paid by the County is less than \$5,000,000, the State's obligation to repay the County shall be reduced by the difference between \$5,000,000 and the amount of interest the County has paid or will pay.

2. The State shall make as a priority consideration to:

A. Program in the 5-year program \$150,000 for Project A in FY 06/07, and \$4,100,000 for Project A in FY 07/08.

B. Program funding for Project 1 into FY 09/10 of the 5-year program.

C. Program funding for Project 2 into FY 10/11 of the 5-year program.

D. Program funding for Project 3 into FY 11/12 of the 5-year program.

E. Repay the County within the 60-month loan period allowed by Arizona Revised Statutes Section 28-7677.

3. The State shall:

A. Begin the construction of each of the Projects when the State is ready and when the County has confirmed that it has finalized arrangements to borrow the entire estimated cost of the Project.

B. Have the option of funding the Projects or any portion thereof from other sources if and when they were to become available, with no obligation to the County. The State shall have no obligation to compensate the County for borrowing any money that is not accepted by the State.

C. Provide quarterly Project and financial status updates to the County within thirty (30) days following the end of each quarter of the State's fiscal year, beginning after execution of this Agreement.

D. Provide to the County an acknowledgment of each payment received from the County pursuant to this Agreement, including an estimated repayment date in accordance with Section II.2.E. of this Agreement.

E. Have no obligation to accept any monies from the County unless and until the Transportation Board has approved a 5-year program that includes the Project to be advanced.

F. Have no obligation to contribute any monies during construction of the Projects.

III. MISCELLANEOUS PROVISIONS

1. The County, and any of its officers, employees, agents, or consultants, shall not represent, through an official statement or otherwise, to any potential bond holder or debt holder, that State Highway Funds will be used to secure the county's bonds and/or debts or that State Highway Funds will be a source of repayments of the county's bonds and/or debts. The County shall submit the proposed preliminary official statement for any bonds, and any comparable document with respect to debt other than bonding, to the State for review before issuing such document.

2. This Agreement shall remain in force and effect until completion of said Project; provided, however, that any portion of this Agreement related to a construction Project that has not been awarded by the State may be cancelled at any time, upon thirty (30) days written notice to the other party.

3. This Agreement shall become effective upon filing with the Secretary of State.

4. This Agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.
5. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this Agreement.
6. In the event of any controversy that may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for Public Works contracts in Arizona Revised Statutes Section 12-1518.
7. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation

Joint Project Administration
205 South 17th Avenue, Mail Drop 616E
Phoenix, AZ 85007

Financial Management Services
206 S. 17th Avenue, Mail Drop 200B
Phoenix, AZ 85007

Yavapai County

Public Works Director
1100 Commerce Drive
Prescott, AZ 86305

8. Pursuant to Arizona Revised Statutes Section 11-952.D., attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

YAVAPAI COUNTY, ARIZONA

By 
A.G. DAVIS, CHAIRMAN
Board of Supervisors

STATE OF ARIZONA

Department of Transportation

By 
DOUGLAS A. FORSTIE, P.E.
Deputy State Engineer

ATTEST:

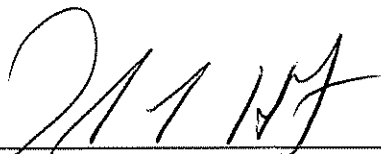
By 
BEV STADDON
Clerk of the Board

JPA 04-045

ATTORNEY APPROVAL OF THE YAVAPAI COUNTY

I have reviewed the above-referenced Intergovernmental Agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and YAVAPAI COUNTY, an Agreement among public agencies that has been reviewed pursuant to A.R.S. Sections 11-951 through 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the County under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 28th day of June, 2004.



County Attorney

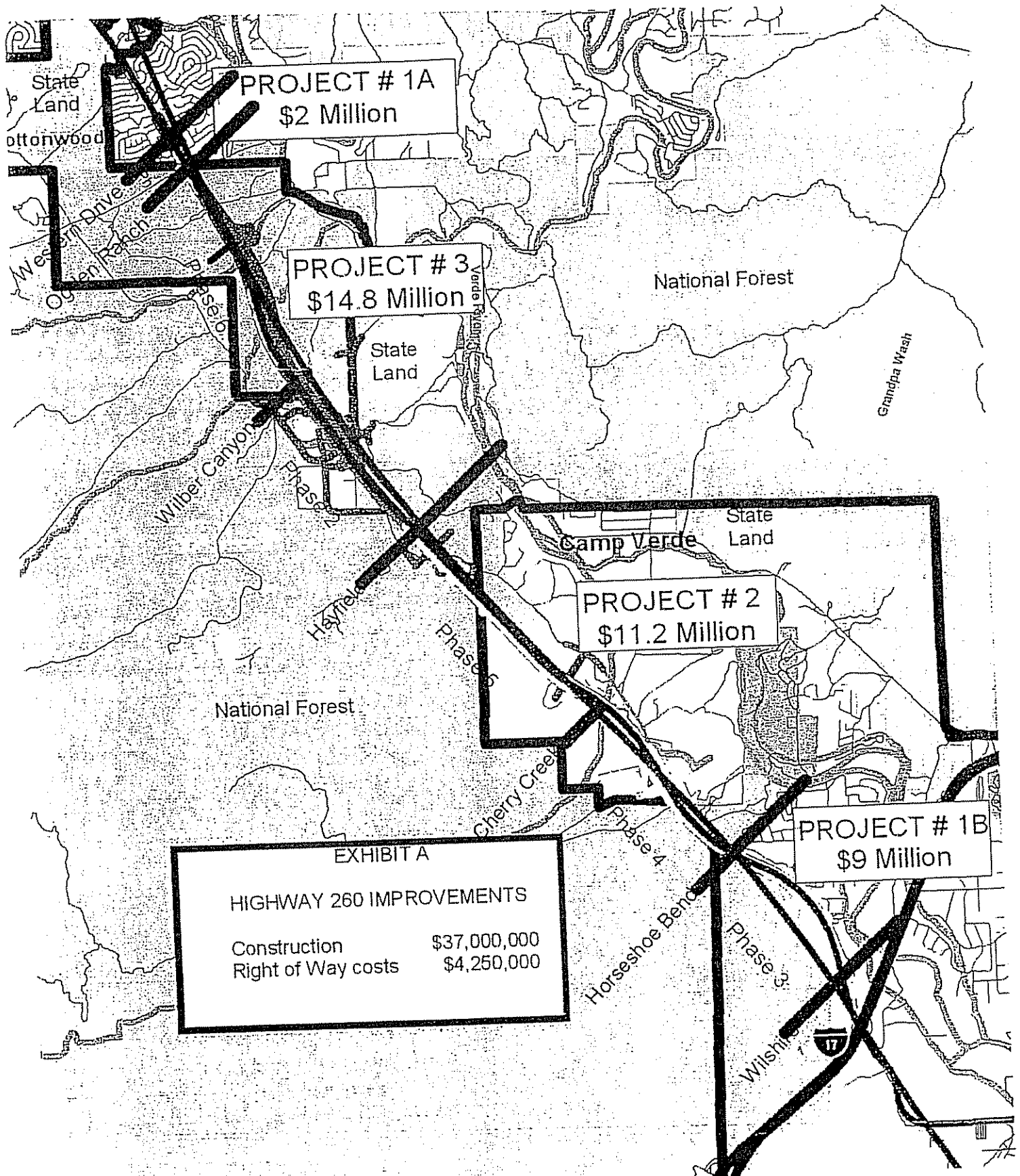


EXHIBIT B

Estimated Funding Information for HWY 260 Construction

Estimated Advancements and Repayments			Estimated County Funded Interest				
Fiscal Year	County Advancement to the State	State Repayment to the County	Int. Rate Est.	1st Loan Interest Payments	2nd Loan Interest Payments	3rd Loan Interest Payments	Total Est. Interest to be Paid
FY 2004/05	\$ 15,250,000	\$ -	3.0%	\$ 457,500			\$ 457,500
FY 2005/06	\$ 11,200,000	\$ -	3.5%	\$ 457,500	\$ 392,000		\$ 849,500
FY 2006/07	\$ 14,800,000	\$ 150,000	4.0%	\$ 457,500	\$ 392,000	\$ 592,000	\$ 1,441,500
FY 2007/08		\$ 4,100,000		\$ 457,500	\$ 392,000	\$ 592,000	\$ 1,441,500
FY 2008/09		\$ -		\$ 457,500	\$ 392,000	\$ 592,000	\$ 1,441,500
FY 2009/10		\$ 11,000,000			\$ 392,000	\$ 592,000	\$ 984,000
FY 2010/11		\$ 11,200,000			\$ 392,000	\$ 592,000	\$ 592,000
FY 2011/12		\$ 14,800,000				\$ 592,000	\$ -
TOTAL	\$ 41,250,000	\$ 41,250,000		\$ 2,287,500	\$ 1,960,000	\$ 2,960,000	\$ 7,207,500

**CERTIFIED COPY OF ENTRY IN OFFICIAL MINUTES
OF THE YAVAPAI COUNTY BOARD OF SUPERVISORS**

YAVAPAI COUNTY)
) ss.
ARIZONA)

Bev Staddon, having been first duly sworn, deposes and says:

I am the duly appointed, qualified and acting Clerk of the Yavapai County Board of Supervisors and in such capacity under the provisions of ARS §11-241 am charged with the responsibilities, among others, of recording all proceedings of the Board and maintaining custody of such records of the Board as are required by law to be maintained. Among the records of which I have custody is the official minute book of the Board of Supervisors which under the provisions of ARS §11-217 is required to be made and kept.

Set forth below is a copy of an entry in the aforesaid minute book of which, as aforesaid, I am the officer having the legal custody. This is my certificate under the provisions of Rule 44(A), Rules of Civil Procedure, and the Uniform Business Records Act, that the said copy is a true and correct copy thereof, to which I attest by my signature subscribed hereunto:

Date of meeting of which the minutes are a record: June 21, 2004.

The entry in the said minutes:

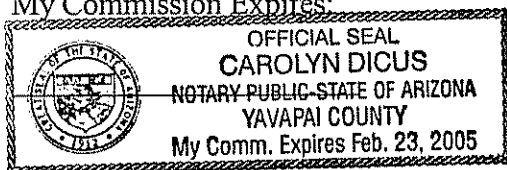
1. Consider approval of intergovernmental agreement with ADOT for SR 260. Assistant Public Works Director Phil Bourdon participated in discussion. Upon a motion by Chairman Davis, seconded by Supervisor Brownlow, the Board voted unanimously to approve this agreement. No comments from the public.

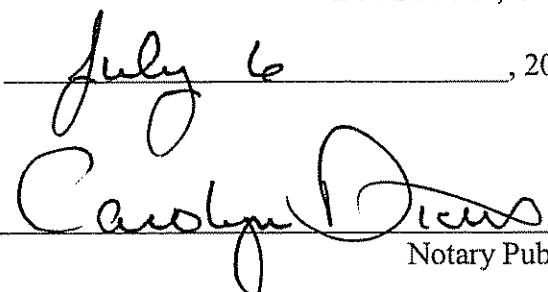
Mr. Holst said that the IGA had been discussed by County staff and ADOT staff and that the agreement was pretty much the same as it had been from the beginning. He said the agreement provided for the state and the County to work together on this project provided all the details can be worked out with regard to County borrowing the money for construction. He said the state would pay the County back for the principal on the borrowed money, with the County paying the interest. Mr. Holst said the loan would be handled in substantially the same way as any other type of revenue bond. Chairman Davis said there had been meetings regarding the right-of-way along Highway 260 and that some utilities would have to be relocated, but that there was an effort to fast-track things so that construction might begin within a year. Supervisor Street asked if the County would need to borrow the entire amount all at one time. Mr. Holst said no, and that he was looking at fixed rate and variable rate options. Chairman Davis said the money could be borrowed in three large sums and then transferred to ADOT in accordance with phases in the project. Supervisor Street said her concern was not with this particular project but with how many loans the County currently had. Chairman Davis said the agreement had been back and forth between County staff and ADOT staff, that it had received legal review and that everyone was in agreement with it. There was brief discussion about the repayment of other loans for road construction.


Bev Staddon, Clerk

SUBSCRIBED AND SWORN to before me July 6, 2004.

My Commission Expires:




Notary Public



TERRY GODDARD
ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

CIVIL DIVISION
TRANSPORTATION SECTION
WRITER'S DIRECT LINE: 602.542.8849

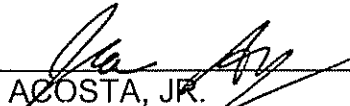
INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR04-0531TRN (**JPA 04-045**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: July 27, 2004

TERRY GODDARD
Attorney General



JOE ACOSTA, JR.
Assistant Attorney General
Transportation Section

SED/mjf
Attachment
855890